

BARNES & THORNBURG

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September 17, 1990

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Ms. Debbie Fript
U.S. EPA - Region V
Emergency Support Section 5HS-12
230 South Dearborn Street
Chicago, IL 60604

RE: Himco Landfill, Elkhart, Indiana
General Notice of Potential Liability

Dear Ms. Fript:

The undersigned are counsel for HIMCO Waste-Away Services, Inc. ("HIMCO"). We are in receipt of correspondence from Robert Bowden dated September 4, 1990, with regard to actions which the agency contemplates undertaking to connect homes located on County Road 10, Elkhart, Indiana, to the municipal water supply due to elevated concentrations of sodium. That correspondence requests us to notify U.S. EPA in writing within 7 days of our willingness to perform or finance that activity.

I have spoken with Tom Nash of the office of Regional Counsel who has informed me that the Agency considers this correspondence to constitute special notice under 42 U.S.C. § 9622(e), and that the contemplated action will be taken in response to the presence in the water of salt or sodium ions, not elemental sodium as is indicated in the letter.

We believe that response actions performed under § 104 of CERCLA can only be taken with regard to releases or threatened releases of "hazardous substances" or "pollutants or contaminants". Our research would indicate that sodium chloride, salt or free sodium ions are not hazardous substances under CERCLA and therefore U.S. EPA may not take any response or remedial action under CERCLA with regard to a release of "salt." This is also true with regard to U.S. EPA's authority under § 106 of CERCLA. Even if the Agency were to allege that the salt in this case constitutes a "pollutant or contaminant", the Agency may be authorized to take removal action but would be prohibited from recovering the costs of any such activity from any responsible party under § 107 because liability under that section is limited to costs incurred in

Indianapolis

Fort Wayne

South Bend

Elkhart

Washington, D.C.

response to releases or threatened releases of "hazardous substances" only.

With regard to the assertion that the correspondence of September 4 constitutes special notice under § 122(e) of CERCLA, we note that the 60-day window afforded to PRP's taking the good faith offer under § 122(3)2(B) is mandatory and would render the proposed 7-day limit ineffective.

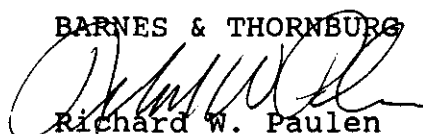
Regardless of what we believe to be the possible technical and legal problems with the subject matter of the U.S. EPA's letter, we wish to inform you that HIMCO has been working with the City of Elkhart and other PRP's to investigate the feasibility and cost of extending municipal water to the six (6) County Road 10 residences living immediately down gradient from the landfill. While these investigations are preliminary at this point, we have been able to determine that it is technically feasible to extend water to the homes, that the main, approximately 2,200 feet would run along the south side of County Road 10 with taps to each of the homes, which are located on the north side of County Road 10. I have included a preliminary sketch of the project for your review. Our investigations further indicate that the cost of this project could run between \$50,000.00 and \$75,000.00. It is my clients intent to continue to pursue these investigations and the possible installation of this water main.

Unfortunately because of the extremely short time for response provided in your letter of September 4, 1990, and the fact that we are unaware of any of the other parties who have received that notice, we are unable to present to you any proposal for the extension of the municipal water supply to the six (6) residences. My client would be prepared to work with the U.S. EPA and would consider contributing its equitable share of any reasonable costs for the installation proposed by the U.S. EPA. This representation is made without admitting any responsibility at this Site and is consistent with our previous correspondence with the U.S. EPA in that we have never admitted being a responsible party at this Site, nor do we make any admissions by taking the above identified action.

Any questions that you may have regarding this letter should be directed to the undersigned as counsel for HIMCO.

Respectfully,

BARNES & THORNBURG



Richard W. Paulen

RWP:ske
Enclosure
cc: Himco Waste-Away Services, Inc.
RWP00385

BARNES & THORNBURG

Sta. 12+00

New 12" Main

21'

County Road - 10

Sta. 16+00

G.T.E. Manholes

MORSE WELDING

1" WATER SERVICE 28279 - County R. 10

Sta. 16+00

G.T.E. Res.

New 12" Main

21'

County Road - 10

Sta. 20+00

1" WATER SERVICE
Sta. 16+68.5

1" WATER SERVICE
Sta. 17+62.7 - 28331 Co. R. 10

PROPOSED

1" WATER SERVICE
Sta. 18+46 - 28393 - Co. R. 10

1" WATER SERVICE
Sta. 19+66

Sta. 20+00

New 12" Main

21'

County Road - 10

Sta. 24+00

NEW FIRE HYDRANT

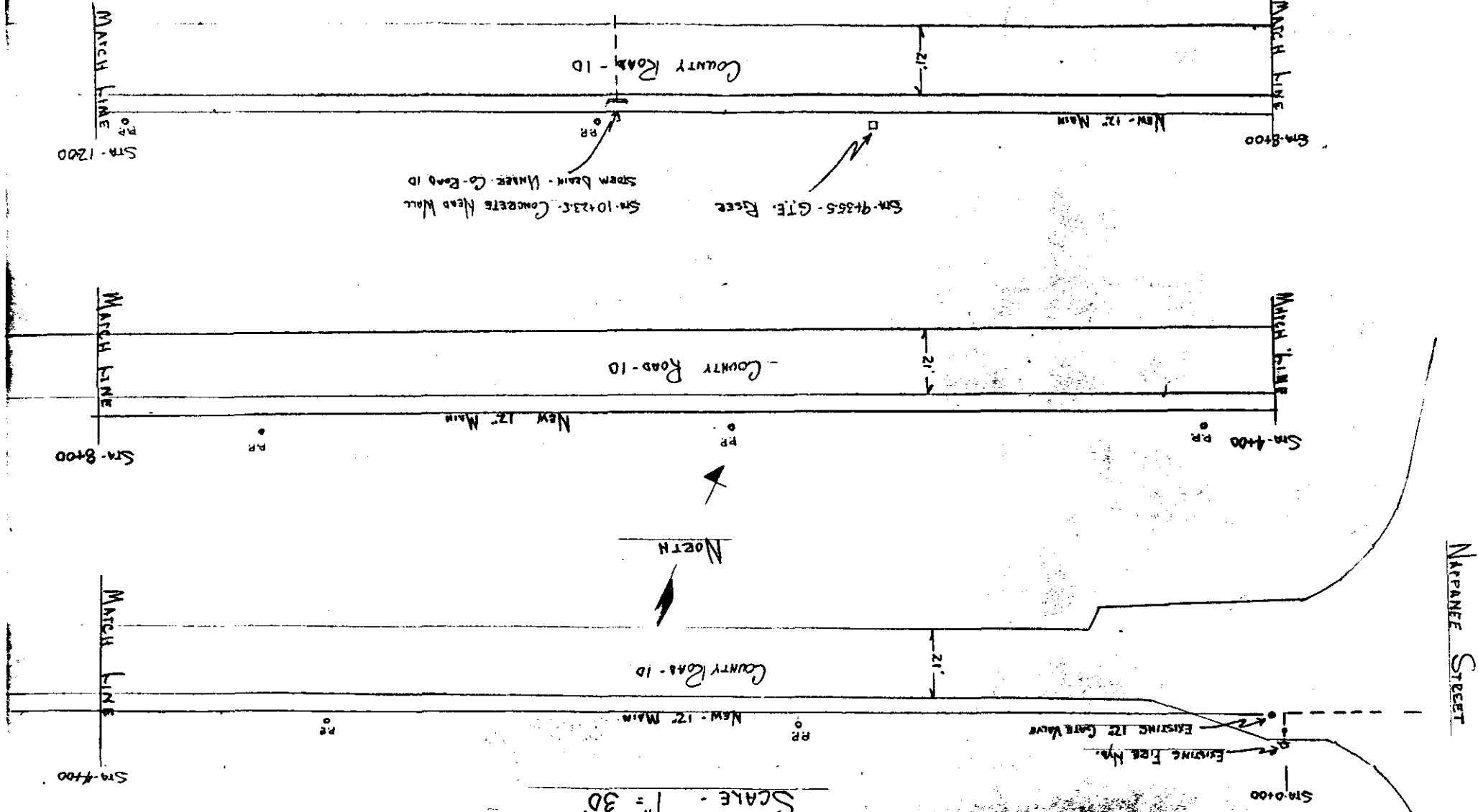
12" Gate Valve + 18" 12" Water Pipe

1" Water Service - Sta. 21+20
28399 - Co. R. 10

P/L

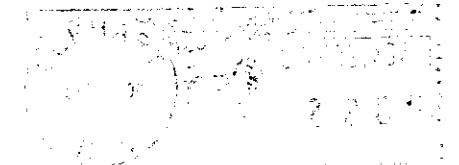
PROPOSED 2200' 12" WATER MAIN EXTENSION - COUNTRY ROAD - 10 WEST OF NAPPANEE STREET

SCALE - 1" = 30'



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